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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 4.12.2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

A.S.No.23 of 1996
and
C.M.P.No.1538 of 2006

1.T.Jayaram Naidu
2.D.Rajaram

... Appellants/Plaintiffs

Vs.

1.Yasodha
2.R.Thiruvengadam
3.R.Alamelu
4.R.Santhanalakshmi
5.R.Boovaraghavan
6.Nalini Lawrance

... Respondents/Defendants

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 C.P.C. against the judgement and decree of the Subordinate Judge, Poonamallee dated 29.09.1995 and passed in O.S.No.156 of 1986.

For appellants : M/s.T.V.Krishnamachari

For RR 6 : Mr.S.James

JUDGEMENT

This appeal has been preferred against the Judgment and Decree dated 29.09.1995 made in O.S.No.156 of 1986 on the file of the Subordinate Judge, Poonamallee.



2.The appellants herein were the plaintiffs in the suit, filed for the relief of specific performance, directing the respondents to execute a registered sale deed in favour of the first appellant or his nominee in respect of the suit property set out in the schedule thereunder.

3.As per the schedule of property, it is situated at Plot No.68, in S.No.326/1, Saidapet Taluk, Tambaram, comprising of three shops, with specific measurements and boundaries. The case of the appellants/plaintiffs is that the suit property belonged to the respondents 1 to 5 and their mother late Amirthavalli Thayarammal. While they were residing at No.46, Elaya Azhagar Koil Street, Saidapet, on 23.09.1983 Amirthavalli Thayarammal had approached the first appellant to put up construction of three shops at his own cost on the eastern side of the residential building which was subsequently let out to the appellants. According to the appellants, on 23.09.1983, Amirthavalli Thayarammal told the appellants that she was in need of money for the marriage expenses of the fifth respondent and requested the first appellant to construct three shops in the vacant site at his own cost by giving an assurance that she would sell the suit property, together with buildings to be put up by the first appellant at the prevailing market value on the proposed date of sale. Accordingly, believing her words the first appellant spent a sum of Rs.58,842.44 for putting up three shops, bearing Door Nos.8A, 8B and 8C. The aforesaid agreement dated 23.09.1983 was only oral and it was agreed between the parties that the said sum of Rs.58,842.44 shall be given credit towards the sale consideration. The appellants have further stated that on 18.11.1983, Amirthavalli Thayarammal let out two shops bearing Door Nos.8A and 8B, to the first appellant on a monthly rent of Rs.200/- each and she had also received a sum of Rs.39,000/- towards advance. Similarly, the other portion bearing Door No.8C was let out to the second appellant, son-in-law of the first appellant for a monthly rent of Rs.200/- and a sum of Rs.20,000/- was also received for the same, by Amirthavalli Thayarammal towards advance and the appellants/plaintiffs had paid the rent up to April 1986.

4.It has been further stated by the appellants that on 16.06.1986, the respondents 1 to 5 sent a notice stating that they had sold out the suit property to the sixth respondent under a registered sale deed dated 22.01.1986. The Original Sale Deed has been marked as Ex.B.5. The appellants came to know about the sale deed executed in favour of the sixth respondent, only through the legal notice issued by respondents 1 to 5. The appellants further contended that they have paid totally a sum of Rs.1,17,842.44 and that the first appellant had always been ready and willing to perform his part of the contract. Based on the above pleadings,



the appellants herein filed the suit seeking the relief of specific performance.

5. Per contra, the respondents 1 to 5 have contended that there is no privity of contract between the first appellant and the respondents 1 to 5 and they have totally denied the alleged Sale Agreement said to have been entered into between Amirthavalli Thayarammal and the first appellant. According to the respondents, there was no proposal to sell the property to the first appellant and that the first appellant was engaged only as a Contractor for putting up construction of three shops. On his repeated demand with Amirthavalli Thayarammal and the respondents 1 to 5, the first appellant was engaged only as a contractor and accordingly the rental agreement was made between Amirthavalli Thayarammal and the appellants, but there was no oral Sale Agreement as alleged by the appellants between the first appellant and Amirthavalli Thayarammal or between the first appellant and the respondents 1 to 5 and Amirthavalli Thayarammal. The expenses incurred by the first appellant towards the said construction, was appropriated and adjusted as per the understanding of rental agreements between the first appellant and the respondents 1 to 5. The amounts spent by the first appellant/first plaintiff are one and the same. That apart, for the construction cost, the first appellant had not paid any amount to Amirthavalli Thayarammal or to the respondents 1 to 5.

6. It is seen that the alleged oral Sale Agreement dated 23.09.1983, has been totally denied by the respondents and therefore, as held by the Trial Court, it is the bounden duty of the appellants to prove the oral Sale Agreement and establish their case. In support of their case, the first appellant examined himself as P.W.1. Apart from examining the other witness P.W.2, Exs.A.1 to A.33 have been marked on the side of the appellants before the Trial Court. On the side of the respondents, the first and sixth respondents were examined as D.W.1 and D.W.2 and one Rajarathinam was examined as D.W.3, apart from marking the documents Exs.B.1 to B.22.

7. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the appellants submitted that oral agreement is also legally valid and enforceable, through Court of Law. According to the learned Senior Counsel, the first appellant has established that there was a oral Sale Agreement between himself and the deceased Amirthavalli Thayarammal and the respondents 1 to 5 that he was ready and willing to perform his part of the contract. As the respondents 1 to 5 declined to execute the sale deed in his favour, he filed the suit for specific performance. The learned counsel further contended that only at the request of Amirthavalli Thayarammal, the shops in Door Nos. 8A, 8B and 8C were constructed by the first appellant for which, no amount was paid by Amirthavalli Thayarammal or the respondents 1 to 5 and the expenses incurred for the construction



was adjusted towards the sale consideration. According to the appellants, the sixth respondent could not be a bonafide purchaser for value. In support of his contention the following decisions were relied on by the learned Senior counsel, 1. (1990) 4 SCC 147 (BRIJ MOHAN AND OTHERS V. SUGRA BEGUM AND OTHERS) 2. 2004 (1) CTC 117 (Syamala Proprietrix V. R.Gopinathan).

8.The Honourable Supreme Court of India, in the decision reported in 1990 (4) SCC 147 has categorically ruled that a oral agreement of sale is also valid and specific performance could be enforced, based on such oral agreement of sale. Similarly, this Court in the decision reported in 2004 (1) CTC 117 has held that oral agreements are also valid agreements and merely because a subsequent agreement is registered, it does not provide a better right than the earlier oral agreement, as per Section 10 of Indian Contract Act, 1872. However, in both the decisions, it has been made clear that the burden of proof lies on the person who claims the relief based on the oral agreement.

In the light of the decisions, it is quite clear that as per Section 10 of Indian Contract Act, 1872 even oral agreement for sale is valid and also enforceable through Court of law, provided the person claiming the right should establish the existence of such a oral agreement and also the fact that he was ready and willing to perform his part of the contract.

9.According to the respondents, the sixth respondent is a bonafide purchaser for value and that there had been no oral agreement of sale between the first appellant and the deceased Amirthavalli Thayarammal and others, as alleged by the appellants. It is not in dispute that the first appellant had entered into a Rental agreement, as per Ex.A.32 with Amirthavalli Thayarammal on 19.11.1983. As per this agreement, out of the three shops constructed at No.8, Shanmugam Road, Tambaram (West), Saidapet Taluk, two shops were let out, to the first appellant for a monthly rent of Rs.200/- each and that Amirthavalli Thayarammal had received a sum of Rs.39,000/- as advance towards the rental agreement, and she had agreed to deduct a portion of the amount towards the monthly rent. Ex.A.33, is a similar Rental Agreement entered into between the second appellant and Amirthavalli Thayarammal on the same day, with reference to the third shop at No.8, Shanmugam Road, Tambaram (West), Saidapet Taluk whereby, the third shop was let out for monthly rent of Rs.200/- to the second appellant for which Amirthavalli Thayarammal received a sum of Rs.20,000/- as advance towards the rental agreement. As per the agreements, from the aforesaid advance amount, a portion of the rent has to be deducted as agreed by the parties. Though the Rental Agreements (EXs.A.32 and A.33) relating to the suit property between the appellants and Amirthavalli Thayarammal on 19.11.1983 are written agreements, the appellants would say that on 23.09.1983 there was a oral agreement for sale in respect of the suit properties between the first appellant and late Amirthavalli



Thayarammal and the respondents 1 to 5. As contended by the learned counsel for the respondents, there is no satisfactory explanation as to why the agreement for sale alone was oral, even when the Rental agreements, receipts for payment of rent on various dates are in witting. It has been admitted by the first appellant/P.W.1 that he had paid the rent up to April 1996. Similarly it is not in dispute that Amirthavalli Thayarammal died in January 1985 itself. Apart from the evidence of the first appellant/P.W.1, Exs.A.1 to A.3, rental receipts for the period between 23.02.1984 and 08.01.1985, and Ex.A.4 dated 28.09.1985, rental receipt for payment of Rs.2,400/- would show that the appellants were paying the rent only as tenants of the property for which they have obtained receipts.

10.In the cross examination, the first appellant as P.W.1, has stated that he had inspected the site of the suit property on 23.09.1983, then he met Amirthavalli Thayarammal in the evening, at her residence and completed the construction on 10.11.1983. It is an admitted fact that the first appellant entered into rental agreement Ex.A.32 only on 19.11.1983. Had there been any oral agreement for sale, on 23.09.1983 itself, as alleged by him at least the alleged fact could have been incorporated in the rental agreement, marked as Ex.A.32.

11.It is an admitted fact that the respondent had sent legal notice dated 16.06.1986, original of Ex.B.1 to the first appellant and the postal acknowledgment card has also been marked as Ex.B.2. Similar notice was also issued to the second appellant on the same day. A copy of the same has been marked as Ex.B.3, and its Postal Acknowledgment Card has been marked as Ex.B.4. As per the legal notices Exs.B.1 and B.3, the appellants were asked by the respondents 1 to 5 to pay the rent to the sixth respondent on the ground that she had purchased the said property from them under a sale deed. However, the appellants did not pay the rent to the sixth respondent, but paid before the Rent Controller in R.C.O.P.No.132 of 1986.

12.It is not in dispute that in the rent control proceedings, the appellants were directed to pay the rent to the sixth respondent on the ground that she had become the landlady of the suit property. Admittedly, the Rent Control Appeal in R.C.A.No.12 of 1991 was also preferred by the first appellant, wherein the order passed by the Rent Controller was confirmed and thereby the appellants had to pay the rent to the sixth respondent herein, being owner of the property. The first appellant has admitted that there is no other money transaction between himself and the respondents 1 to 5. After the receipt of the legal notices issued by respondents 1 to 5, directing the appellants to pay the rent to the sixth respondent on the ground of the sale deed executed by them in favour of the sixth respondent, the appellants had to pay the rent to the landlord/landlady and in order to avoid the eviction proceedings, under



the Tamil Nadu Buildings (Lease and Rent Control) Act, the appellants were in a position to deposit the rent before the Rent Controller. The first appellant has admitted that no suit was filed to set aside the sale deed executed by the respondents 1 to 5 in favour of the sixth respondent.

13.The first respondent herein who was examined as D.W.1, has deposed that the respondents 2 to 5 are her younger brothers and younger sisters and her father Ranganayakalu Chettiar died, while he was working as Tahsildar. However, the respondents 1 to 5 and their mother Amirthavalli Thayarammal had sufficient means for their livelihood and there was no necessity for them to get money from the first appellant for the marriage of her sister. According to her, there was no oral Sale Agreement between the first appellant and her mother Amirthavalli Thayarammal as alleged by the first appellant. According to her, on 22.01.1996, along with the respondents 2 to 5 she sold the suit property in favour of the sixth respondent for a sale consideration of Rs.1,77,000/-. Having purchased the property under the sale deed Ex.B.5, the sixth respondent is paying property tax to the authorities as absolute owner of the property. She has also denied the allegations of the first appellant by saying that herself and respondents 2 to 5 or their mother had never received Rs.1,17,842.44 towards any sale agreement, as pleaded by the appellants. According to the sixth respondent, D.W.2, she purchased the suit property as per the Sale Deed, Ex.B.5 on 22.01.1986 from the respondents 1 to 5 herein for valuable consideration and having purchased the property, regularly paying property tax as per Exs.B.7 to B.12. According to the sixth respondent, she is the bonafide purchaser of the suit property for value.

14.It is not in dispute that the respondents 1 to 5 had salable right in the suit property, after the demise of Amirthavalli Thayarammal. On 22.01.1986 as per document No.323 of 1996, they had executed the sale deed for the consideration of Rs.1,77,000/- in favour of the sixth respondent herein after which, on 16.06.1986, the respondents 1 to 5 intimated the same by way of legal notice to the first appellant under Ex.B.1, second appellant under Ex.B.3. The respective postal acknowledgments have also been marked. Under the aforesaid legal notices, the respondents 1 to 5 have clearly informed that they have sold the property to the sixth respondent and also requested the first appellant to attorn the tenancy in respect of the property in Door Nos.8A and 8B (two shops), Shanmugam Road, Tambaram (west) to Mrs.Nalini Lawrance, the sixth respondent and under Ex.B.3, similar notice was sent to the second appellant regarding Property in Door No.8C (1 shop), Shanmugm Road, West Tambaram. In the reply notice dated 30.06.1986, Ex.A.24, sent by the first appellant to the second respondent, it has been stated that he had agreed to sell the shops to the first appellant and his son-in-law, the second appellant. In the said notice, the date of the alleged oral agreement has not been stated, in the similar reply notice dated 30.06.1986 sent by the



second appellant to the second respondent also the alleged date of oral agreement and other particulars were not given by the second respondent, for the reasons best known to the appellants.

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15.As per Section 10 of Indian Contract Act, though a oral agreement for sale is also valid and legally enforceable, it is a settled proposition of law that the person claiming specific performance should establish the ingredients, which are basically necessary for the contract of sale. In the plaint, the appellants have stated that oral contract of sale was entered into on 23.09.1983 between the first appellant and late Amirthavalli Thayarammal. As contended by the learned counsel for the respondents, had there been any oral agreement for sale, at least the date of the same could have been stated in their reply notice dated 30.06.1986. The appellants have not stated what was the actual sale consideration as per the alleged oral agreement. On the other hand, the appellants/plaintiffs have stated that they had agreed to purchase the property for the market value of the property on the proposed date of sale and accordingly, they calculated the market value at Rs.1,28,407.50.

16.It is a settled proposition of law that for a valid contract of sale, the date of agreement, a definite sale consideration, the time limit for the performance of the contract are the essential factors. As the appellants have placed their claim based on an alleged oral agreement for sale, they are bound to establish the legal aspects that are required for a valid contract of sale. It is not in dispute that Amirthavalli Thayarammal died in the year 1985. The appellants have not stated any proposed time limit for the performance of the contract of sale based on the alleged oral agreement dated 23.09.1983, said to have been entered into between the first appellant and late Amirthavalli Thayaramma and others. Though rental agreements were made by the appellants with Amirthavalli Thayarammal on 19.11.1983 by way of written agreements and the rent amounts have been paid by them, on obtaining due receipts from Amirthavalli Thayarammal and others they have stated that the agreement of sale alone is oral. Further, it is seen that the appellants had sent various cheques towards payment of rent to the second respondent, for which copy of the letter, with details about the cheques and the postal acknowledgments have been produced and marked as Exs.A.14 to A.23. Under such circumstances, this Court is of the considered view that there could be no possibility for the first appellant to enter into an agreement for a sale orally with Amirthavalli Thayarammal and others, without reducing the same into writing.

17.The non furnishing of alleged date of the oral sale agreement in the reply notice sent by the appellants to the second respondent. The uncertain amount of sale consideration and the non-mentioning of time limit for the performance of the alleged contract, would also go to show that there was no oral sale agreement between the first appellant and the



deceased Amirthavalli Thayarammal and the respondents 1 to 5, as alleged by the appellants. On the other hand, it has been established by oral and documentary evidence that the sixth respondent has purchased the suit property under Ex.B.5, registered sale deed, for valuable consideration and the same had also been intimated to the appellants by way of legal notices to attorn the tenancy, since the sixth respondent had become the land lady of the property, by virtue of the sale deed Ex.B.5.

18.It is not in dispute that as per the order passed in the rent control proceedings, in R.C.O.P.No.132 of 1996, the learned Rent Controller had directed the appellants to pay the rent to the sixth respondent, being the land lady of the property. Admittedly, the appeal preferred by the first appellant, before the Rent Control Appellate Authority had been dismissed confirming the order passed by the Rent Controller.

19.Under such circumstances, this Court is of the considered view that there is no prima facie case made out in favour of the appellants herein to seek the relief of specific performance. It is clear that the appellants have failed to establish the alleged oral sale agreement between the first appellant and the deceased Amirthavalli Thayarammal and the respondents 1 to 5. On the other hand, it has been clearly established that the sixth respondent is a bonafide purchaser of the suit property for value as per the Sale Deed, Ex.B.5, executed by the respondents 1 to 5.

20.In the facts and circumstances, I could find no error or infirmity in the judgment rendered by the Court below in dismissing the suit filed by the appellants herein, so as to warrant any interference of this Court and hence, the appeal fails.

21.In the result, confirming the Judgment and Decree passed by the Court below, the appeal is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

sgl/jrl

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar



To

1. The Subordinate Judge,
Poonamallee.

2. The Record Keeper,
V.R.Section, High Court, Madras.

+1 cc to Mr.T.V.Krishnamachari, Advocate Sr.No.71626.

+1 cc to Mr.S.James, Advocate Sr.No.71385.

NG (CO)
DCP/8.1

A.S.No.23 of 1996